

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

July 13, 2023 at 2:00 p.m.

1. <u>23-90111-E-11</u> <u>23-9006</u> CAE-1	MICHAEL HOFMANN	STATUS CONFERENCE RE: NOTICE OF REMOVAL 5-14-23 [1]
--	-----------------	---

HOFMANN V. HOFMANN ET AL

Plaintiff's Atty: Brian S. Haddix

Defendant's Atty: unknown

Adv. Filed: 5/14/23

Answer: none

Nature of Action:

Validity, priority or extent of lien or other interest in property

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

The Status Conference is XXXXXXX
--

On May 14, 2023, the Debtor/Debtor in Possession removed a State Court Action involving substantial interests in real estate, litigated offsets, and the dissolution of common interests of family members. While the State Court litigation has been a long, expensive slog, it appears that in the related Bankruptcy Case, 23-90111, the Debtor/Debtor in Possession, the family member and non-family member opponents, and the Subchapter V Trustee appear to have found a process, using the Bankruptcy Code, to afford all parties in interest their fair "day in court," compliance with orders of the State Court, and preservation of their respective values in the real properties at the center of their dispute and extensive litigation.

At the Status Conference, XXXXXXX

July 13, 2023 at 2:00 p.m.

Page 1 of 9

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 6/13/23 [Dckt 21];
Order granting filed 6/16/23 [Dckt 24]

Notice of Continuation of Perfection of Security Interests; Demand for Adequate Protection [secured creditor
Yosemite Production Credit, PCA] filed 6/26/23 [Dckt 25]

Debtor's Chapter 11 Status Report filed 6/29/23 [Dckt 28]

Trustee Report at 341 Meeting lodged 7/5/23

The Status Conference is continued to 2:00 p.m. on XXXXXXX , 2023.
--

JULY 13, 2023 STATUS CONFERENCE

This Subchapter V case was commenced on May 22, 2023. The Status Conference Report filed by the Debtor/Debtor in Possession states that the business of Debtor is to provide management and cultivation services to other persons who own almond orchards. Debtor's assets of significant value consist of farm equipment.

At the Status Conference, XXXXXXX

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 5/18/23

[BJ-1] Motion of American AGCredit, FLCA and American AGCredit, PCA for Relief from the Automatic Stay filed 5/16/23 [Dckt 39]; Order [*prepared by the court*] granting motion in part and continuing hearing to 10:00 a.m. on 8/10/23 filed 6/16/23 [Dckt 64]; Order [*prepared by the attorney*] Granting Motion of American AGCredit, FLCA and American AGCredit, PCA for Relief from the Automatic Stay; Continuing Hearing filed 6/30/23 [Dckt 69]

Plan of Reorganization for Small Business Under Chapter 11 / G Arata & Son Inc.'s Plan of Reorganization Dated June 26, 2023 filed 6/26/23 [Dckt 65]

Debtor's Updated Chapter 11 Status Report filed 6/29/23 [Dckt 67]

Order Setting Confirmation Hearing [8/10/23 at 2:00 p.m.] and Related Deadlines filed 6/30/23 [Dckt 68]

[BJ-1]

--

JULY 13, 2023 CONTINUED STATUS CONFERENCE

The Debtor/Debtor in Possession filed an updated Status Report on June 29, 2023. Dckt. 67. The Debtor/Debtor in Possession is pursuing confirmation of a Subchapter V Plan, Dckt. 65, with the confirmation hearing set for September 7, 2023.

On July 6, 2023, American AgCredit, PCA, filed its Status Report as a creditor in this case. American AgCredit asserts that the Debtor was not engaged in business prior to the filing of this Subchapter V Case and the Subchapter V Plan provides for the liquidation of personal property assets and prosecution of litigation against a family member and the family member's company. Thus, American AgCredit asserts that the absence of any ongoing business makes the Debtor ineligible for SubChapter V relief.

Additionally, American AgCredit asserts that if there are claims against family members of the Debtor's principals, then an independent, neutral fiduciary, such as a Chapter 7 Trustee, should prosecute such litigation.

At the Status Conference, **XXXXXXX**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 5/23/23

The Post-Confirmation Status Conference is XXXXXXX
--

JULY 13, 2023 POST-CONFIRMATION STATUS CONFERENCE

A review of the Docket discloses nothing has been filed since the May 22, 2023 updated Status Report filed by the Debtor/Debtor in Possession. At the Status Conference, XXXXXXX

MAY 23, 2023 POST-CONFIRMATION STATUS CONFERENCE

On May 22, 2023, the Debtor/Debtor in Possession filed an updated Status Report. Dckt. 2023. The updated information includes the following:

- A. A Modified Plan will be filed to address that the claim for lease for rejection damages by Fresno Truck Center were not provided for in the now confirmed Plan because the rejection was made by the confirmation of the Plan and the Creditor's claim was subsequently filed.
- B. The Modified Plan will also address the direct payments to creditors by the Debtor/Debtor in Possession as Plan Administrator and not through the Subchapter V Trustee.

The Subchapter V Debtor/Debtor in Possession addressing (a bit belatedly) the concerns identified by the Subchapter V Trustee, continuance of the Status Conference is proper.

MAY 18, 2023 POST-CONFIRMATION STATUS CONFERENCE

In reviewing the Docket, the court notes that nothing has been filed since the April 6, 2023 Post-Confirmation Status Conference. As shown in the Minutes below from two prior Post-Confirmation Status Conference, the Subchapter V Trustee states that the Subchapter V Debtor/Debtor in Possession is making direct payments to creditors on their claims and not through the Subchapter V Trustee.

No updated Status Report has been filed by the Debtor/Debtor in Possession for the May 18, 2023 Status Conference, and none have been filed since the February 11, 2021 confirmation of the Plan in this case.

The Civil Minutes from the Confirmation Hearing state that there were four of the thirteen classes of claims that voted to confirm the Plan. Dckt. 130. No other ballots were cast in the other nine classes of claims, and for the four accepting classes, no ballots were cast against confirmation. *Id.*

The Bankruptcy Code provides in 11 U.S.C. § 1194(b) that if the Plan is confirmed under 11 U.S.C. § 1191(b), then the Subchapter V Trustee will make all payments to creditors under the Plan, unless the Plan proves otherwise. 11 U.S.C. § 1191(b) provides that if the requirements for confirmation provided in 11 U.S.C. § 1129(a)(8) [all impaired classes accept], (a)(10) [at least one impaired class votes to accept if there are any impaired classes of claims], and (a)(15) [distribution amount if a holder of an unsecured claim objects].

As shown in the Civil Minutes for the confirmation of this Subchapter V Plan, no all impaired classes voted to accept the Plan and it was confirmed pursuant to 11 U.S.C. § 1129(b).

The judge to whom this case is assigned will not be able to attend the May 18, 2023 Status Conference due to a last minute schedule change. Rather than having the judge covering the May 18, 2023 calendar conduct the Status Conference, the court continues it to 1:30 p.m. on May 23, 2023, specially set to the Sacramento Division Courthouse – Telephonic Appearances Permitted.

The court does this so that it may address with the SubChapter V Trustee and counsel for the Debtor/Debtor in Possession whether the payments are being made through the SubChapter V Trustee, the Plan needs to be modified to provide for the Debtor/Debtor in Possession to make the payments, or the Subchapter V Trustee and Debtor/Debtor in Possession now agree that payments are to be made directly by the Debtor/Debtor in Possession.

If the Subchapter V Trustee and the Debtor/Debtor in Possession have resolved this payment issue, they may file a joint status report advising the court of such resolution and the basis therefore, which joint status report may also request that the court continue the Post-Confirmation Status Conference.

APRIL 6, 2023 POST-CONFIRMATION STATUS CONFERENCE

Since the January 26, 2023 Status Conference, the court has entered an order approving interim fees and expenses for David M. Souza, the Subchapter V Trustee. Order; Dckt. 195. No updated Status Report has been filed by the Debtor/Debtor in Possession Plan Administrator.

At the Status Conference, counsel for the Debtor Plan Administrator reported that the disputed claim over the truck leasing claim are still the subject of ongoing discussions.

The Trustee reported that Debtor Plan Administrator has been making the Plan payments directly to creditors with secured claims, and not making them through the Subchapter V Trustee.

JANUARY 26, 2023 POST-CONFIRMATION STATUS CONFERENCE

No updated status reports have been filed and no post-confirmation fee applications have been filed. By the end of March 2022, the final orders were entered on the Debtor/Debtor in Possession Plan Administrator's objections to claims. There has been nothing filed in connection with the administration of this case and the Confirmed Plan since March 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported that the dispute over rejection damages is ongoing with Fresno Truck Center, dba Lee Financial Services.

The court continues the Status Conference to allow the Debtor/Debtor in Possession Plan Administrator to reach a resolution of this ongoing dispute or commence the necessary claim objection litigation.

5. [21-90484-E-11](#) **TWISTED OAK WINERY, LLC** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
10-4-21 [1]
SUBCHAPTER V

Debtor's Atty: Brian S. Haddix

Notes:

Continued from 6/15/23

The Status Conference is XXXXXXX
--

JULY 13, 2023 STATUS CONFERENCE

A review of the Docket reflect that yet again no updated Status Report has been filed by the Debtor/Debtor in Possession. No updated Status Report has been filed by the Subchapter V Trustee. No updated Status report has been filed by any creditor. No updated Status Report has been filed by the US Trustee. Thus, it appears that these parties are admitting there is nothing remaining to be filed or done in this case under Chapter 11.

The Debtor/Debtor in Possession, Subchapter V Trustee, and Creditors have been "Struggling" for five months to draft an order confirming the Subchapter V Plan in this case. For the past five months, the Debtor/Debtor in Possession, Subchapter V Trustee, and Creditors appears to have been operating outside of the Bankruptcy Code, having their own "private plan," dispensing with the "need" to have a mere order confirming a Subchapter V Plan issued by the court.

At this juncture, with the inability of the Parties to provide the court with an order confirming the Subchapter V Plan, little remains to do but convert this case to one under Chapter 7.

At the Third Post-Confirmation Hearing Status Conference without a proposed order confirming the Subchapter V Plan having been lodged with the court during the past five months, **XXXXXXX**

JUNE 15, 2023 STATUS CONFERENCE

No updated Status Report has been filed by the Debtor/Debtor in Possession. A review of the Docket reflects that the Debtor/Debtor in Possession has not lodged with the court a proposed order confirming the Subchapter V Plan. The court entered its order granting the Motion to confirm the Subchapter V Plan on February 22, 2023 - four months prior to the June 15, 2023 Status Conference.

As reflected in the court's order granting the Motion states that given the unique creditor class (only one creditor), the parties had not yet agreed whether this was a consensual or non-consensual Plan. The Parties requested that the court allow them to "work it out" on that issue.

At the March 9, 2023 Status Conference the Parties reported that the proposed confirmation order would be lodged with the court in April, 2023. No order was lodged with the court.

A review of the Docket reflects that no updated Status Report has been filed by the Debtor/Debtor in Possession or the Subchapter V Trustee. It is unclear whether this Subchapter V Plan is going to be confirmed and administered, or whether the case is taking a different turn.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that they are working on the order and whether the modification can make it a consensual plan.

MARCH 9, 2023 STATUS CONFERENCE

On February 22, 2023, the court entered its order granting the Debtor/Debtor in Possession's Motion to Confirm the Subchapter V Plan in this case. No confirmation order has been entered as of this time. The order granting the Motion to Confirm provides that counsel for the Debtor/Debtor in Possession is to lodge with the court the proposed order confirming the Plan.

As noted in the Order granting the Motion to Confirm, counsel for the Debtor/Debtor in Possession Plan Administrator, counsel for U.S. Trustee, and counsel for the Mechanics Bank were to confer whether this confirmation, in light of the agreement reached with Mechanics Bank whether this was a consensual confirmation and the confirmation order could so provide. If not, then the confirmation would be of a non consensual plan.

At the Status Conference, counsel for the Debtor in Possession reported that they are drafting the Order Confirming the Plan and that it will be filed in the next month.

FINAL RULINGS

6. [23-90029-E-11](#) RAMIL/MELINA ABALKHAD STATUS CONFERENCE RE:
[23-9005](#) COMPLAINT
CAE-14-28-23 [\[1\]](#)

SEROR V. ABALKHAD ET AL

Continued to 9/28/23 at 2:00 p.m.

Final Ruling: No appearance at the July 13, 2023 Status Conference is required.

Plaintiff's Atty: David Seror; Jessica S. Wellington
Defendant's Atty: James R. Selth

Adv. Filed: 4/28/23
Answer: none

Nature of Action:
Objection/revocation of discharge
Dischargeability - priority tax claims
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
[JS-1] Stipulation for Extension of Time to Respond to Complaint to Determine Nondischargeability of Debt and Objecting to Entry of Discharge filed 6/5/23 [Dckt 7]; Order granting stipulation filed 6/6/23 [Dckt 9]

[DZ-1] Stipulation (1) for Second Extension of Time to Respond to Complaint to Determine Nondischargeability of Debt and Objecting to Entry of Discharge and (2) to Continue Status Conference filed 6/23/23 [Dckt 10]; Order granting extension and continuing status conference to 9/28/23 at 2:00 p.m. filed 6/30/23 [Dckt 12]

<p>Pursuant to prior order of the court, the Status Conference has been continued to 2:00 p.m. on September 28, 2023.</p>
--

JULY 13, 2023 STATUS CONFERENCE

The court has continued the Status Conference pursuant to the request of the Parties. Order; Dckt. 10. The Parties report that they have reach agreed terms for a settlement, the documents are being

drafted, and approval of the settlement will be requested both in this court and the court in which the R.J. Financial Bankruptcy Case is pending.